

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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IVAN ANTONYUK; COREY JOHNSON, ALFRED TERRILLE;
JOSEPH MANN; LESLIE LEMAN; and LAWRENCE SLOANE,

Plaintiffs,

vs.

1:22-CV-986

KATHLEEN HOCHUL, in her Official Capacity
as Governor of the State of NY, et al.,

Defendants.

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Transcript of a Motion Hearing held on
September 29, 2022, at the James Hanley Federal
Building, 100 South Clinton Street, Syracuse,
New York, the HONORABLE GLENN T. SUDDABY, United
States District Judge, Presiding.

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A P P E A R A N C E S

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(Open Court, 11:09 a.m.)

2 THE CLERK: Case is Ivan Antonyuk versus Kathleen
3 Hochul, et al., 22-CV-986, Counsel, please note your
4 appearances for the record.

5 MR. STAMBOULIEH: Stephen Stamboulieh for the
6 plaintiffs.

7 MR. THOMPSON: James Thompson from the Office of
8 the Attorney General for the state defendants.

9 MR. McCARTIN: And Michael McCartin with the
10 Attorney General's Office as well, your Honor, for the state
11 defendants.

12 THE COURT: Okay, good morning, everyone. We're
13 here to hear argument on the TRO, and we'll follow the same
14 order we did in the last arguments. We'll have plaintiff
15 present their arguments, give defendants an opportunity to
16 present their arguments, and then we'll have a response from
17 both parties, and I want you to feel free to relax and take
18 your time. I'll give you the time that you want to make your
19 arguments. Okay. Anything further before we get started?
20 Mr. Melvin, are you going to want to make any argument on
21 behalf of your clients.

22 MR. MELVIN: Yes, your Honor.

THE COURT: Okay, very well, so we'll make sure
that we do that. Nobody from Onondaga County? Okay.

25 MR. STAMBOULIEH: That's the one thing I wanted to

1 address, your Honor, with your Honor's text ordering we serve
2 all of the defendants, we served them by priority mail, I
3 personally mailed out copies of the order to all of the
4 defendants by regular mail as well and I e-mailed all of the
5 defendants the order as well, and as your Honor knows, there
6 were some defendants missing, some of them didn't respond at
7 all. I personally corresponded via e-mail with defendant
8 Stanzione who asked me for additional documents which I gave
9 to him via e-mail.

10 THE COURT: Okay. Okay. All right. Well, then
11 plaintiff, plaintiffs' counsel, when you're ready you can
12 start your argument, sir.

13 MR. STAMBOULIEH: Thank you, your Honor. May it
14 please the court, my name is Stephen Stamboulieh, I'm here on
15 behalf of the defendants on a temporary restraining order.

16 THE COURT: On behalf of defendants?

17 MR. STAMBOULIEH: I'm sorry, on behalf of the
18 plaintiffs, Judge, I'm very sorry about that, so on behalf of
19 the plaintiffs.

20 THE COURT: All right.

21 MR. STAMBOULIEH: This case is very similar to the
22 *Ivan Antonyuk I* case, I'll just refer to it as *Antonyuk I*,
23 and then we have a number of plaintiffs now that have set
24 forth their intentions to carry, to continue to carry, in
25 violation, multiple different violations of the Concealed

1 Carry Improvement Act. It ranges from carrying in zoos,
2 carrying in parks. Plaintiff LeMan runs a hotel, now he's
3 not going to be able to apply for a state wine and beer
4 license because, as soon as he does, it triggers the
5 exception under the CCIA that would completely make his
6 premises off limits to even him as the proprietor of his
7 hotel. Plaintiff LeMan is also a firefighter, volunteer
8 firefighter, and he carries a firearm when he goes to these
9 various places when he's responding to a call, he doesn't
10 have an opportunity to go disarm himself prior to responding
11 to a call and he is in violation of the CCIA when he responds
12 to those calls now. Ivan Antonyuk, as the court said in
13 *Antonyuk I*, is extremely law-abiding and will absolutely not
14 violate this statute, I mean would not do it.

15 THE COURT: That was pretty clear from his
16 testimony.

17 MR. STAMBOULIEH: Yes, sir, and he wanted me to
18 tell the court again and put it in his affidavit that he
19 would not violate the CCIA but if it were enjoined, he would
20 absolutely carry, and he intends to carry if it were
21 enjoined, but until it's enjoined, he won't carry, and he's
22 basically self-censoring, not engaging in
23 constitutionally-protected activity due to, and only but for
24 the CCIA.

25 And we have a number of other plaintiffs that, you

1 know, like Ivan, want to carry and intend to carry, Judge,
2 and have been carrying, in violation of the CCIA, and then we
3 have the sixth plaintiff, plaintiff Lawrence Sloane, who
4 doesn't have a permit, can't get a permit, because the
5 sheriff who has not appeared in this case will not accept an
6 application until October of 2023. Now, as the judge
7 acknowledged in *Antonyuk I* --

8 THE COURT: Could you expound on that when you say
9 he won't accept an application until October of 2023?

10 MR. STAMBOULIEH: Yes, sir.

11 THE COURT: What are you talking about? Why is
12 that?

13 MR. STAMBOULIEH: Yes, sir. So the sheriff has
14 gone to an appointment system and the first appointment that
15 was available was October 24th if I recall correctly, and I
16 have a screenshot of it in the moving papers I believe, or it
17 might be in the complaint, it's in one of them, Judge, that
18 sets forth the next appointment and at the time of filing it
19 was 58 weeks from that day, I think it was the 20th that we
20 filed the case. So --

21 THE COURT: And how is it that you're relating that
22 waiting period to this new statute?

23 MR. STAMBOULIEH: So, he's unable to even apply
24 because he has to have all of his social media, he has to
25 have the 18 hours of additional training, and he basically

1 falls under the new provisions of the Concealed Carry Act in
2 order to apply. As the defendants pointed out, *Decastro*,
3 which is a Second Circuit case which says you have to apply
4 first before you can challenge a handgun licensing scheme, it
5 also talks about the futility and you don't have to apply
6 maybe if there's a futility exception. And we would submit
7 and we provided, you know, good reasons and allegations in
8 the complaint and in the declaration that support the
9 allegations that he's unable to apply. Number one, he does
10 not want to surrender his First or Fifth Amendment right by
11 giving his social media, he doesn't want to do the extra
12 training, he doesn't want to list all his family members and
13 it's the things that are required now, under the statute,
14 that won't allow him to apply unless he surrenders his
15 constitutional rights, and as this court acknowledged in
16 *Antonyuk I*, quoting the Supreme Court, the Supreme Court
17 found it intolerable that you would have to surrender one
18 right to invoke another right, and yet that's what the state
19 is requiring Mr. Sloane to do. But for the CCIA and the
20 sheriff not accepting applications, which I don't know how
21 else you could prove something's futile if the sheriff
22 literally won't accept the application for 58 weeks, he would
23 apply for the permit. He's not prohibited, he would be
24 granted the permit, but he just can't apply for it.

25 We have a number of defenses that the state has

1 raised in this current case that I would just like to touch
2 on briefly because we don't have an opportunity to reply in
3 this case. As I already mentioned, we have a certain number
4 of defendants, William Fitzpatrick, who is the DA of
5 Onondaga, Chief Cecile of the Syracuse Police Department,
6 David Soares, the Albany County District Attorney, Joseph
7 Stanzione, the District Attorney of Greene County, and then
8 Sheriff Eugene Conway of Onondaga County. Sheriff Conway is
9 the person that would have accepted Sloane's application if
10 there was an appointment not in 58 weeks.

11 So briefly what I'd like to do is talk through the
12 Oswego County defendants, Mr. Oakes and Mr. Hilton, who are
13 represented by Melvin, I think his name is, sorry if I get
14 that wrong. They say that they have -- that Pastor Mann, who
15 is the pastor who actually lives in a parsonage that's
16 physically connected to a church, which under the CCIA is a
17 sensitive location, Pastor Mann can't carry there. Pastor
18 Mann's carrying there, he put it in an affidavit -- I'm
19 sorry, in a declaration. It says we haven't provided
20 concrete enough specifics of our violations, and they wanted
21 dates. But he's currently, he currently has a firearm in his
22 home, as I said, connected, it's in a parsonage connected to
23 church property, used for church business, in fact it's owned
24 by the church, they allow him to live there. He says that he
25 always has his gun in the church and in his home and he will

1 continue to do so. Judge, I don't know what other thing I
2 could provide to the court to show his standing on that
3 particular issue. It seems like they ignored Mann's
4 declaration in paragraph 11 where he says, I intend to
5 continue to possess and carry my firearm while on church
6 property in violation of the CCIA. It seems pretty clearcut,
7 a big difference from Ivan.

8 Very peculiar comment is that there was, they claim
9 that we have no notice confirming that the church and his
10 home are off limits under the CCIA, and if the court
11 remembers from the opinion where the court listed out all of
12 the various things, it talks about places of worship. The
13 pastor's church is literally called Fellowship Baptist
14 Church. I don't know what other notice could be provided to
15 Pastor Mann that his church is in fact a church and it's off
16 limits under the CCIA, and there doesn't seem to be any
17 indication to the contrary that his church is in fact not a
18 church. I don't think that that's just -- that argument
19 makes any sense.

20 They also ignored the First Deputy Superintendent
21 Nigrelli where he talked about the enforcement, and he said
22 it right next to Governor Hochul, there will be zero
23 tolerance, if you break the law, you will be arrested. It's
24 on Youtube, we put the link to it, I believe it starts at 37
25 minutes and 40 seconds or something like that, he comes right

1 out and says it. They also ignore the sheriff's threat, if
2 you can read it as a threat, that he would enforce the law,
3 and he specifically cited to the section about churches and
4 specifically cited that if you were to be caught violating
5 this in a church, it's one-and-a-third year in prison to four
6 years in prison. So the sheriff has come out and made
7 enforcement threats against it.

8 They did not disavow -- excuse me, they did not
9 disavow enforcement of the Concealed Carry Improvement Act;
10 rather, in their footnote, they reserved the right to defend
11 its constitutionality at some point in the future. But they
12 didn't -- they didn't do it in this one. Given an
13 opportunity to say that it doesn't -- that the CCIA doesn't
14 apply to Mann in his church, in his home or any of the other
15 allegations, they haven't done that.

16 And then I'll move to the state defendants who are
17 represented by my friends over here, defendant Hochul, Bruen,
18 and Judge Doran. And the first thing I want to talk about is
19 the futility argument, I touched on it briefly. They cited
20 to a number of different laws, they didn't really fully
21 develop that argument. They quoted to the *Libertarian Party*
22 v. *Cuomo* but if we go to the actual case and we read the
23 whole citation, it says, in order to challenge the New York
24 firearm licensing laws, a person must either have applied for
25 and been denied a license or "make a substantial showing that

1 his or her application would be futile." It's not, it's not,
2 you have to apply and then period, full stop, there's nothing
3 else. There's the exception, there's the futility exception.
4 And we've made a substantial showing, I would submit to the
5 court, in that Lawrence Sloane simply cannot apply. And if
6 he could apply, he would have to surrender one right, one
7 constitutional right -- well, in this case two, the Second
8 and the Fifth Amendment, in order to exercise his Second,
9 Supreme Court said that's intolerable. He's not -- he
10 doesn't just have a mere objection or antipathy to the law,
11 that's cited to in *Libertarian v. Cuomo* that says it's not
12 enough to show that you just object to the law, and of course
13 we haven't just objected to the law, we put forth argument
14 and evidence that he can't apply and it's unconstitutional,
15 he shouldn't be able to -- he shouldn't have to trade one
16 right for another.

17 When we talk -- when they cited to the *Bruen* case,
18 they say that the *Bruen* plaintiffs, Koch and Nash, applied
19 and were denied and that was the proper cause standard.
20 That's a little bit different because when they were applying
21 for that, obviously the sheriff took their application, the
22 licensing official who they sued in that matter as well as
23 Bruen said you just didn't have proper cause, but they didn't
24 make you provide your social media accounts and do all of the
25 extra stuff that they're requiring to do now. So it's not

1 something that Lawrence Sloane is willing to do to give all
2 of his social media to them. And as he put in his
3 declaration, his Facebook profile is set to friends only so I
4 am not his friend on Facebook so I wouldn't be able to see
5 what he posts and I don't know how the sheriff or the
6 licensing official would be able to see what he posts unless
7 he was required to friend -- accept a friend request or
8 somehow sit in front of the licensing official, which doesn't
9 say that they can't order him to do because the statute says,
10 you know, any other such information that the licensing
11 officer requests, so does that mean passwords? And I know
12 the state defendants said they don't require you to accept a
13 friend request, but I don't know why it would be in the CCIA
14 saying that the sheriff has to do this review of social media
15 if all you have to do is lock down your social media accounts
16 and make them private or friends only. It just doesn't seem
17 like that would be the intent of the legislature in doing
18 that.

19 They question in their letter brief that a TRO is
20 not applicable to this procedure, and they cited to a
21 District Court's acceptance of a magistrate judge report and
22 recommendation. It's the wrong citation but it doesn't
23 matter because you can literally just follow it back on LEXIS
24 to the original magistrate judge report and recommendation.
25 The case that they cited to did not say that a TRO is the

1 incorrect procedure. What it said was, the court, the
2 plaintiff in that case, a prisoner, said I'm going to file
3 this TRO and the court said he filed it as a TRO, I will also
4 treat it as a preliminary injunction, which they denied
5 because he was incarcerated and they found no evidence other
6 than his own speculation that the person that arrested him
7 would retaliate against him for filing his lawsuit. So I
8 don't think that there's a problem here when we have multiple
9 violations of constitutional rights, especially with the
10 expansive list of the Concealed Carry Improvement Act
11 sensitive locations and restricted locations, that a TRO
12 would be inappropriate here.

13 They also cited to the *Frey v. Bruen* case that
14 plaintiffs have not alleged facts showing that they have been
15 prosecuted in the past or have been threatened with
16 enforcement of any of the statutes that they are challenging.
17 And you know, Nigrelli came out and said the things that he
18 said on Youtube that we've cited to in the briefs, certain
19 sheriffs have also made statements that we have included and
20 cited to in the briefs. None of them have come out and said
21 that they are absolutely not going to enforce the law, I
22 don't know how closer you would get to a direct threat than
23 what Nigrelli, who's the first deputy of the state police,
24 when he says that there will be zero tolerance, we will
25 arrest you, I don't know how much more it could be unless

1 they, you know, called up Pastor Mann and told him that we're
2 coming to get him, and maybe that's why they want the extra
3 three days to stay the TRO, but hopefully that's not what it
4 is.

5 So as the Second Circuit's provided in *Picard v.*
6 *Magliano* which we cited to in our brief, credible threat of
7 enforcement is a "forgiving and low threshold standard and
8 courts are generally willing to presume that the government
9 will enforce the law as long as the relevant statute is
10 recent and not moribund," and that's what we have here. This
11 was a law that just went into effect 29 days ago and it's
12 obviously not moribund, there's a lot of press on it, we have
13 state police saying they're going to enforce it, we have DAs
14 and sheriffs saying we're going to enforce the statute. One
15 of the sheriffs said we're not going to charge you with a
16 crime but we are going to confiscate your firearm and send
17 you to the licensing official to see whether or not your
18 permit should be revoked. So I mean, it's more than just
19 where, like the *Frey v. Bruen* case where they simply said
20 we're going to point to this statute and because of the
21 existence of this statute, there is our credible threat.
22 That was the *Frey* case, F-r-e-y, that's not what we have
23 here, we have a lot of comments on it.

24 And again, Judge, we've gone through good moral
25 character. I don't read the state's response as having

1 really anything to add that already hasn't been dealt with in
2 the previous briefing that we've submitted, and *Antonyuk I*,
3 like I said earlier, they talked about the social media and
4 how it's limited by statutes, by the statute dealing with
5 good moral character and that it doesn't require passwords
6 but, you know, obviously the statute also says the licensing
7 official can ask for basically whatever he wants. Obviously
8 it's going to be narrowed by, to what's in front of the
9 licensing official at the time, but that isn't really a good
10 comfort to someone that doesn't want to turn over their
11 social media accounts when the social media accounts are
12 what's at issue to the licensing official.

13 They make an interesting argument about
14 severability, I'm not sure that they meant it this way but
15 this is the way I took it, Judge, is that if there's a
16 constitutional application of one of the sensitive places
17 like, let's take polling places for instance which was
18 directed, which was directly discussed in *Bruen*, then all of
19 them must be constitutional because it's a part of one big
20 package. And that seems to downplay the severability clause
21 that they have in the CCIA. So it's -- I think it needs to
22 be either there's a severability clause and the judge, if the
23 judge were to grant a TRO can blue pencil the remedy he
24 wants, or the whole statute goes away because there's so many
25 different places that are off limits and it's not severable.

1 And I'm not sure that that's the argument that they've made
2 but that's how I took it to be, that if at least one of them
3 is constitutional, then the whole statute stands and I don't
4 think that's the law.

5 They seem to have wholly ignored the in-person
6 media requirement, kind of going back to social media
7 disclosure requirement and how it doesn't compel testimonial
8 evidence and that the carry permit application is civil or
9 quasi-civil in nature. And of course, Judge, as you know, if
10 I'm sitting in front of a licensing official and I plead the
11 Fifth, there's going to be an adverse inference that the
12 licensing official is going to say when he asks me, I don't
13 know, anything, do you smoke marijuana and I say I invoke the
14 Fifth, he's going to probably take that adversely and, you
15 know, that would disqualify me from having a permit.

16 The restricted locations, Judge, we've briefed this
17 extensively. They cite again to the *GeorgiaCarry* case which
18 doesn't apply for the same reasons that your Honor stated in
19 *Antonyuk I*. It has nothing to do with, you know, someone
20 wanting to carry in a church where the church has
21 specifically said you can't carry here. This state has
22 flipped the whole issue around and said you just can't carry
23 in a church, so I don't think *GeorgiaCarry* is a good case for
24 them to cite to for the reasons that we've briefed and for
25 the reasons that your Honor has stated previously.

1 THE COURT: So your argument there is that the
2 religious congregation or group should be able to decide
3 whether or not they allow carry?

4 MR. STAMBOULIEH: Your Honor, that's how it works
5 in every state that I'm aware of. If a private business
6 doesn't want something in their business, they have the right
7 to exclude, you know, those people. And the state made a big
8 deal about the right to exclude in their briefing papers from
9 the last case. I don't have a problem with a private
10 property owner excluding someone. If someone comes to my
11 house and wants to hold a rally inside my den, I don't want
12 to have a rally inside my den, I'm perfectly fine to exclude
13 those people. If someone doesn't want to have a gun in their
14 home, they don't have to have a gun in their home. It's
15 completely up to them, but what the state has done is they've
16 flipped it to where the people that want you to come over
17 with the firearm have to be compelled to speak and say yes,
18 please come, or post a sign. As Ivan said in his
19 declaration, he doesn't want to post a sign because then that
20 just makes him a target, maybe his neighbors don't agree with
21 his position on being a gun owner and could lead to him being
22 harassed.

23 There's something that they cited to about a TRO
24 against state laws is an irreparable injury to the state. So
25 I went back and I kind of looked at these opinions that they

1 cited to. The one that they cited to, the *Maryland* case was
2 a chambers opinion from Chief Judge Roberts with no other
3 court members on the opinion obviously, and then he cited to
4 Justice Rehnquist's chambers opinion, so it seems like
5 there's no other -- there's no other citation for this
6 proposition that the state has irreparable harm when they've
7 enjoined the law, that was at least cited to in the brief.
8 And what instead they've done is they've cited to one judge's
9 opinion citing to another judge's in-chambers opinion and
10 they're not full court opinions.

11 I don't think there's any merit when they claim
12 that there's public confusion, if the law were to be
13 enjoined, there would be public confusion. They say that
14 these counties are now implementing the law, they're
15 currently implementing the law, not that this law has already
16 been implemented, they use i-n-g which signifies to me that
17 this is an ongoing implementation of the law so if it were to
18 be enjoined, I think the public confusion would be a little
19 bit lessened because then everyone would know, you know,
20 where they could carry, where they couldn't carry rather than
21 I guess basically everything's off limits now.

22 One of their claims in their irreparable harm is
23 people want to go about their daily lives without fear of
24 strangers with guns, that's on page 10. I don't think that
25 even factors into the equation. Prior to this concealed

1 carry law, the same people with guns, the ones that passed
2 the background checks, the ones that passed the invasive
3 mental health check, the ones that sat in front of the
4 licensing official and convinced him that he had proper cause
5 to carry a firearm were going to restaurants, going out to
6 eat, watching movies, having friends over, going to the zoos,
7 checking their firearm at an airport in compliance with
8 federal law, sitting in church or going to parks and all of
9 the other things that the CCIA now makes a felony. And maybe
10 some people have a problem with that, but you know, this is
11 constitutional rights and the Supreme Court said in *Bruen* we
12 have a right to public carry and that they can't declare all
13 of Manhattan a sensitive place. And that's kind of what
14 they've done.

15 There's something procedurally, I don't think it
16 really matters, the related case issue, they are preserving
17 it for appellate review. It seems to me General Order 12
18 starts off with, "The assignment plan does not vest any
19 rights of litigants or members of the bar," doesn't seem to
20 be appealable under *United States v. Davila-Bajana* which is a
21 Second Circuit case that said a complaint about the
22 reassignment of this case is legally baseless.

23 So what I would end with, Judge, is they claim that
24 we haven't articulated any harm so dire that a temporary
25 restraining order could not be stayed and this is when they

1 asked for, I think it was three days if you're inclined to
2 enter a TRO today. There's no indication that any of them
3 would be harmed by a stay for -- to allow for appellate
4 review. We have ongoing violation of the First, the Second,
5 the Fifth, and the Fourteenth Amendments of the Constitution,
6 ongoing violations. In affidavits our plaintiffs intend to
7 do this, they continue to do this. I don't know, you know,
8 what it would take to show them a situation that's more dire
9 than law-abiding citizens getting arrested for doing
10 something that the Supreme Court has said they have a right
11 to do under the Second Amendment.

12 THE COURT: Well, Counsel, let me ask you this. If
13 I were to decide to grant the TRO that you're requesting, and
14 the state requests a stay, can you elaborate on what you
15 think a three-day stay, what the harm would be to allow the
16 state to basically take it to the Circuit and say is this
17 judge right or wrong?

18 MR. STAMBOULIEH: Sure, Judge, absolutely. So as a
19 principle of like a constitutional harm and avoidance of a
20 constitutional harm, for my plaintiffs who are in fear of
21 prosecution because they're currently violating the law and
22 they intend to violate the law, three days might mean the
23 difference of someone catching them with a firearm and this
24 is kind of a public case now, versus if the law was enjoined
25 right now, I could call them and say, hey, the judge entered

1 this, you know, don't worry, rather than three days. I'm not
2 saying the state's going to do -- engage in any bad faith and
3 go rush out and arrest them, send the SWAT teams, but you
4 know, could we have assurances that if the judge entered
5 that, that they wouldn't go do that to those plaintiffs? And
6 you know, that would be my response for the three days, your
7 Honor. That's it, your Honor, thank you very much.

8 THE COURT: Okay. Thank you. I don't know if
9 defense counsel have discussed order with Oswego County and
10 the state.

11 (A discussion was held off the record between
12 counsel.)

13 THE COURT: I guess you just did.

14 MR. THOMPSON: Yeah. Thank you, your Honor. James
15 Thompson from the Office of Attorney General Letitia James
16 for defendants Hochul, Bruen, and Judge Doran.

17 Your Honor, there is no basis for a TRO here.
18 There's no immediate and irreparable harm, there's no money
19 that's going to be wired, there's no SWAT teams that are
20 being sent in, there's no property that's going to be
21 disposed of, there's no ship that's leaving the harbor.
22 There is nothing based on the record in front of us that is
23 imminently about to happen that needs to be stopped in order
24 to preserve the status quo. Instead, what the plaintiffs
25 want is for the court to --

1 THE COURT: Are you telling me there's no
2 enforcement of this statute at this point?

3 MR. THOMPSON: I'm not saying that.

4 THE COURT: Okay.

5 MR. THOMPSON: I am saying that there has been no
6 specific threat of enforcement against any specific plaintiff
7 that I'm aware of or that has --

8 THE COURT: But nothing's stopping any designated
9 law enforcement official to take enforcement measures at this
10 point?

11 MR. THOMPSON: I think that's correct. Nothing is
12 stopping them from doing that, but a general ability to
13 enforce the law is not sufficient for either standing or for
14 imminent harm. And so instead what the plaintiffs are asking
15 for is a mandatory injunction that alters the status quo, it
16 enjoins the law enacted by the people's representatives.
17 That's not what a TRO is for, again, absent some sort of
18 imminent harm or imminent injury that's simply not present
19 here. And even if a mandatory injunction were appropriate in
20 this procedural context, the plaintiffs have not made the
21 heightened showing necessary for one.

22 So in terms of the merits, I'll go into them
23 because Mr. Stamboulieh did, but as a threshold matter the
24 plaintiffs' standing problems still haven't been fixed,
25 adding additional state defendants doesn't change that. And

1 that's because standing has three elements to it: Injury in
2 fact, traceability, and redressability. And so simply suing
3 the person who might apply the statute at some point in the
4 future does not mean that there's an injury in fact and
5 doesn't mean that that noninjury is traceable to that person.

6 So as to Governor Hochul, there's no allegation
7 that she has taken any concrete action other than making
8 public statements and signing legislation, which is not
9 actionable. And the complaint even acknowledges that,
10 "Governor Hochul is not the official to whom the legislature
11 delegated responsibility to implement the provisions of the
12 challenged statute." That's from paragraph 9 of the
13 complaint. Similar problem with Judge Doran, he hasn't done
14 anything to any of the plaintiffs. No plaintiff has an
15 application before him, no plaintiff has had an application
16 denied. And that's fatal to the licensing laws generally.
17 Under *Decastro*, there's no standing to raise that challenge
18 unless an application has been denied or unless there's a
19 substantial showing of futility, which there just isn't here.
20 And unilateral desire not to follow the law or an intent to
21 resist the law does not create futility. A plaintiff cannot
22 create his own futility, and *Decastro* says as much.

23 As to Superintendent Bruen, your Honor previously
24 indicated in the *dictum* section of your opinion that you view
25 him as a proper defendant for challenges to the training

1 requirements, the sensitive places prohibitions, and the
2 prohibition on carrying guns onto other people's property
3 without their consent. And we respectfully suggest that some
4 of those should be reconsidered. On training, the state
5 police's only directly relevant role is to approve the
6 curriculum of the training but none of the plaintiffs alleges
7 that they have been harmed by the content of the curriculum.
8 As to enforcement, there's nothing here other than general
9 public statements that the state police will enforce the law.
10 There's never been any prior enforcement against any
11 plaintiff or any direct threat of future enforcement against
12 any specific plaintiffs.

13 Moving to the merits, we'd start by noting that the
14 standard for a pre-enforcement facial challenge must be
15 applied and the challenger can only prevail if he establishes
16 "that no set of circumstance exists under which a regulation
17 would be valid." That's will from *Jacoby & Meyers v.*
18 *Presiding Justices*, 82 F.3d at 184. This is one of the areas
19 where we most strongly disagree with the Court's previous
20 *dictum* opinion and it colors the entire analysis. It's not
21 enough for the plaintiffs, or even the court, to imagine a
22 hypothetical where a law could be applied unconstitutionally.
23 Virtually any law could be applied unconstitutionally and
24 virtually any official from the President on down to the dog
25 catcher can act unconstitutionally. That doesn't give anyone

1 standing to raise a pre-enforcement challenge. Instead, the
2 plaintiffs have to establish that the law can never be
3 applied in a constitutional manner, and I just don't think
4 that that's the case here.

5 For instance, taking the good moral character
6 standard, we would respectfully argue that the analysis here
7 is still controlled by the Second Circuit's holding in
8 *Libertarian Party* which discussed several specific examples
9 of how the prior good moral character standard, which was
10 broader than the one that's been revised under the CCIA,
11 could be applied constitutionally. For instance, if there
12 are threats or if there are indications that someone has been
13 acting recklessly while intoxicated with a firearm. And the
14 Circuit found that "such examples are not beyond an ordinary
15 person's comprehension, nor are they rare." Moreover there
16 is nothing unconstitutional about a character-based standard
17 under *Bruen*, as is evidenced by a number of other state
18 statutes to which we cite and to which the Supreme Court
19 cites that specifically refer to character or moral
20 character. And the New York standard is in fact
21 significantly narrower because it's not based in character
22 alone or a judgment on whether we like someone or think their
23 character is upstanding. It's based on an individualized
24 determination of dangerousness. That is not open-ended
25 discretion, and instead it falls into a long line of Supreme

1 Court and Second Circuit precedent and in our letter brief we
2 cite to *Field Day* and *Ward v. Rock Against Racism*.

3 THE COURT: How does the language of the statute
4 narrow that?

5 MR. THOMPSON: Well, the prior version of the
6 statute simply said good moral character, full stop. The
7 CCIA narrowed that further to say good moral character means
8 having the character and temperament not to use the weapon to
9 endanger oneself or others. So I think that absolutely
10 narrows the question from a judgment about the person to a
11 judgment about the person's dangerousness.

12 And so there is this line, this long line of
13 precedent saying that standards grounded in health and safety
14 are not impermissibly vague or discretionary. So there's
15 been a lot of back and forth about open-ended discretion or
16 unbridled discretion, I don't think that's what this statute
17 gives. Instead, I think it asks for a judgment about a
18 person's dangerousness. And that is entirely appropriate
19 under prior precedent and in fact under the history. As
20 Justice Barrett, then Judge Barrett, wrote, history is
21 consistent with common sense. It says that dangerous -- that
22 the legislature may prohibit dangerous people from having
23 guns. And we cited to a long line of history that I won't
24 trace through here, saying that American history supports the
25 proposition that people with individual indicia of

1 dangerousness cannot and should not have access to firearms.

2 Moving on to social media, again, this is a
3 situation where the plaintiffs have posited a number of
4 hypotheticals and they're not dealing with the statute as it
5 is, or showing that there is no constitutional application of
6 it. All the statute requires is "a list of former and
7 current social media accounts." That's from Penal Law
8 400.00(o). It doesn't require you make the licensing officer
9 your Facebook friend, it doesn't require you to disclose your
10 nonpublic posts. And it's a situation where there are many
11 obviously constitutional applications of the statute. Taken
12 from the *Libertarian Party* case, but also we are aware of
13 many examples, all of us as Americans, where mass shooters
14 have shown an intent to commit murder in their public
15 Facebook posts, before legally obtaining weapons that they
16 use to then kill. The *Libertarian Party* decision enumerates
17 several examples of situations, for instance, if there are
18 threats, for instance if there are indicators that someone
19 has been under the influence while recklessly using a
20 firearm, all of those can and have shown up on social media
21 posts, publicly available social media posts and there's no
22 reason why those circumstances must be ignored just because
23 they're on social media rather than something that's
24 testified to in another way.

25 THE COURT: So based on the language of your

1 statute, what's your interpretation of what an applicant
2 would have to do to satisfy that requirement?

3 MR. THOMPSON: I think an applicant would have to,
4 you know, provide what the statute says, which is a list of
5 the social media accounts that he or she has used in the last
6 three years.

7 THE COURT: And if they're all marked private they
8 don't have to turn them over?

9 MR. THOMPSON: I think they have to indicate that
10 the accounts are theirs, but they don't have to let the
11 licensing official in or give them their passwords or
12 anything of the sort.

13 THE COURT: Where does it say that?

14 MR. THOMPSON: I think it says -- I don't think
15 it's required to say what it doesn't require.

16 THE COURT: Okay. All right. But you also have
17 language in your statute that says the investigating officer,
18 other information may be requested.

19 MR. THOMPSON: That's true, and I think that this
20 is where the facial challenge standard comes in. If there is
21 a situation where a licensing official abuses that portion of
22 the statute and requires something that is unconstitutional
23 or improper, I think that's an as-applied case that we could
24 litigate in front of your Honor if and when it comes in.
25 Again --

1 THE COURT: But you don't see a constitutional
2 issue with your language?

3 MR. THOMPSON: I don't see a constitutional issue
4 with the language, no, I don't.

5 THE COURT: Okay.

6 MR. THOMPSON: And I certainly don't see anything
7 that requires the things that the plaintiff says that this
8 requires. And again, the standard is not whether we can
9 imagine a situation where it would be applied
10 unconstitutionally. The standard is whether there is never a
11 situation when it could be applied constitutionally. And I
12 think under *Libertarian Party*, and that is clearly not the
13 case here, there is a constitutional application. There are
14 plenty of them.

15 In terms of sensitive places, this is another area
16 where the facial challenge standard comes in. Your Honor's
17 *dictum* opinion indicated that the entire list of sensitive
18 locations should be struck down unless there were historical
19 analogues for restricting firearms at all of the above-listed
20 locations. And that, again, I think is the opposite of what
21 the facial statute -- facial challenge standard requires.
22 Here, we know that there are unquestionably sensitive places
23 that are constitutional. The *Bruen* opinion tells us that,
24 saying, "We are aware of no disputes regarding the lawfulness
25 of such prohibitions," that's from 142 S.Ct. at 2133. And

1 the *Bruen* court also explicitly said that the list of
2 sensitive places is not limited to schools, government
3 buildings, legislative assemblies, polling places, and
4 courthouses, but that there are additional analogous
5 sensitive places where firearms should not belong. I think
6 that's enough at this stage to deal with the pre-enforcement
7 facial challenge to the entirety of the statute which is what
8 the plaintiffs have brought.

9 We do have confidence that New York's sensitive
10 places laws are historically justified and we've shared some
11 of the historical justifications in front of you previously
12 and will again in the preliminary injunction briefing. But
13 to the extent that there is a specific case or controversy
14 where a specific plaintiff is, faces a specific threat of
15 prosecution for going into a specific sensitive place, that's
16 something that should be dealt with in the course of an
17 as-applied challenge on a schedule where the government can
18 do historical research, retain experts, do the work that the
19 *Bruen* standard requires of us. It's not something that
20 should be dealt with on a TRO application based only in a few
21 business days.

22 THE COURT: With regard to this particular part of
23 the statute, you want to address the plaintiffs' arguments
24 with regard to one particular plaintiff in Oswego County, the
25 pastor, Reverend Mann?

1 MR. THOMPSON: I think this is a good example,
2 again, of the difference between facial and as applied.
3 The -- Mr. Stamboulieh made a distinction between the fact
4 that the plaintiff Pastor Mann lives in a parsonage that is
5 connected to the church. Is the parsonage a church? Is the
6 parsonage a house of worship? Or is a rectory a house of
7 worship as opposed to the church itself? I think that's an
8 interesting question legally. I think that is frankly a
9 decision that would be made in the course of enforcement
10 actions by law enforcement officials whom I don't represent.

11 THE COURT: And as you know, Reverend Mann is the
12 leader of that congregation in that house of worship; if he
13 wants to carry his weapon into that church, you're saying the
14 state has a right to prohibit him from doing that.

15 MR. THOMPSON: I think there is a deep historical
16 tradition of prohibiting guns in houses of worship in the
17 United States. There are a large number of historical
18 precedents for that. So yes, I think prohibiting guns in a
19 house of worship is something that is a part of American
20 history and tradition and we would welcome the opportunity to
21 show that. And, you know, we're all aware of Mother Emanuel,
22 Tree of Life Synagogue, any number of -- Sutherland Springs,
23 Texas, any number of instances where persons, many cases,
24 persons with legal -- with legal possession of guns have
25 committed horrors in houses of worship. So I think, yes,

1 that is something that is justified by American history and
2 tradition. And I'm happy to go into any other specific
3 contexts if you'd like.

4 Otherwise, I would move on to private property.

5 Before I do, Mr. Stamboulieh briefly mentioned in-person
6 interviews and character references and training. We did not
7 address those in our letter brief, mostly because your Honor
8 had already indicated that you viewed those as likely to be
9 constitutional and because frankly we felt we were pushing it
10 with an 11-page letter brief as it stood, but that is
11 certainly something that we can address in the future and we
12 would submit that if your Honor indicated that there was not
13 a likelihood of success on the merits previously, I don't
14 think there's anything that's been put in front of your Honor
15 that would change that, certainly on a TRO application.

16 As to private property, I think the new complaint
17 is clarified because it really makes clear that the
18 plaintiffs are claiming that the Second Amendment
19 presumptively grants them a right to carry a gun onto other
20 people's property and into their homes. That's something
21 that's present in paragraphs 190 and 203 of the complaint.
22 There is no support of that in the text of the Second
23 Amendment or in the Supreme Court's jurisprudence. I think
24 it's actually directly contrary to Justice Scalia's focus on
25 the sanctity of the home and the need to protect the home in

1 the *Heller* decision. And I think it's important to bear down
2 on what this statute actually does. By setting the default
3 where it does, New York's private property protection makes
4 sure that the homeowner gets to make an informed decision.
5 He gets to know whether someone is bringing a gun onto his or
6 her property or into her home, and gets to say whether or not
7 that's okay with them, gets to consent, yes or no, do I want
8 not just the person but the gun on the property. If the --
9 if the default were set otherwise, if the default were, guns
10 can go anywhere unless there is specific statements
11 forbidding it, you know, one of the -- one of the best
12 hypotheticals I can think of, it's February, the heater goes
13 out in your house, you call a repairman. Do you have the
14 right to know if the repairman is bringing a gun into your
15 home? I think most people would expect that they would have
16 the right to know that and to make that decision. And
17 there's no harm to the repairman in saying, hey, I normally
18 carry a concealed weapon, is it all right if I do that here?
19 The homeowner should be able to know that, the homeowner
20 should be able to make that decision and that's what is
21 accomplished by setting the default where it is. And I think
22 that's something that is, that the *GeorgiaCarry* court was
23 concerned with when they talked about "a private property
24 owner's right to exclusively control who and under what
25 circumstances is allowed on his or her own premises." Laws

1 that set the default empowering owners to give consent as to
2 the carrying of a firearm on their property have a solid
3 historical basis, as we demonstrated. I think there's no
4 reason to believe that a tradition that was supported by five
5 identified state laws in the 18th and 19th century is not
6 sufficient under *Bruen*. Particularly because such a finding
7 would indicate that those laws were presumably
8 unconstitutional for those centuries despite never having
9 been struck down or challenged.

10 Again, there's no immediate and irreparable injury
11 here that would immediately justify a temporary restraining
12 order. No plaintiff has submitted an application for a
13 concealed carry permit, none has been denied, no one has
14 alleged they plan to violate the law before a preliminary
15 injunction motion can be heard or that there will be
16 enforcement against them. There is simply no basis to find
17 that any plaintiff will in the coming days, "suffer an injury
18 that is neither remote nor speculative, but actual and
19 imminent, and one that cannot be remedied if a court waits,"
20 in this case a preliminary injunction decision, "to resolve
21 the harm." That's from *Hart v. Town of Guilderland* citing,
22 quoting *Grand River Enterprise v. Pryor*, 481 F.3d at 66.

23 Responding to a couple of Mr. Stamboulieh's
24 arguments, as to the sheriff who is not present here, all
25 I'll say is I have no visibility into what the situation is,

1 but your Honor raised a very good point which is that it's
2 not clear that whatever delay in the sheriff's processing is
3 caused by the CCIA. I have no idea how long the wait time
4 was if the application had been put in two months ago versus
5 today.

6 In terms of whether someone has to surrender their
7 rights to make an application, I don't think that that's the
8 case. In terms of the Fifth Amendment, first of all, there's
9 no standing because no one has invoked the Fifth Amendment,
10 no one has had any consequences brought against them for
11 invoking the Fifth Amendment, no statement has -- no
12 compelled statement has been used against anyone in any sort
13 of criminal action.

14 THE COURT: Let's take that a step further.
15 Don't -- isn't there a requirement that the applicant would
16 have to swear to the truth of their application?

17 MR. THOMPSON: Yes, I believe that's likely to be
18 the truth. But I think that's the case on, you know, many
19 forms and applications that people fill out in a large number
20 of contexts. That doesn't necessarily mean that there is,
21 you know, compelled self-incrimination. Particularly --

22 THE COURT: Well, the statutes that you're
23 referring to, can you draw one to my attention that requires
24 them to provide their social media accounts and provide other
25 presumably possibly private information and swear to the

1 truth of it?

2 MR. THOMPSON: I don't have a specific one in front
3 of me but I think we can all understand that we are all
4 frequently in the course of any number of interactions with
5 federal, state, local government, we put down our addresses,
6 our Social Security numbers, our e-mail addresses, any number
7 of pieces of information about our lives.

8 THE COURT: Identifying information.

9 MR. THOMPSON: Identifying information, as is the
10 case --

11 THE COURT: Doesn't the statute take it a step
12 further?

13 MR. THOMPSON: I actually think that this is
14 essentially identifying information, all that is required is
15 a list of your social media accounts, essentially identifying
16 your online presence, and beyond that --

17 THE COURT: Names of family, people that you live
18 with, spouses, former spouses, all, again, would be your
19 position that's just identifying information?

20 MR. THOMPSON: I think that that is information
21 that is, you know, generally, generally known and I don't
22 think that it's -- again, I don't think that there has been
23 any Fifth Amendment violation here. I don't think there's
24 any standing, anyone has been forced to give that
25 information, I don't think anyone has had that information

1 used against them.

2 THE COURT: Don't they have to provide that
3 information as part of their application?

4 MR. THOMPSON: Three do have to provide that
5 information as part of their application, that's true.

6 In terms of compelled speech, the idea that the
7 private property protection is compelled speech, that is not
8 the case. No one is compelled to say anything. Nor if they
9 do say anything are they compelled to speak the government's
10 position. Everyone -- no one, and you can determine what, if
11 anything, you want to say in terms of granting consent for
12 people to bring guns onto your property, and the government
13 doesn't tell you what to do.

14 THE COURT: Isn't that presumptively illegal unless
15 the property owner says you can bring a gun?

16 MR. THOMPSON: That is true.

17 THE COURT: Okay, so it's not a case where the
18 property owner says nothing and, you know, therefore a person
19 with a carry permit can go onto their property legally?

20 MR. THOMPSON: That's true, but in the converse, if
21 the default was guns are allowed anywhere absent someone
22 speaking up and saying no, you have the same problem, right?
23 The people with carry permits would be allowed to take guns
24 onto your property and into your home, again, absent someone
25 speaking up --

1 THE COURT: So again, you're making a decision for
2 the citizen, you're making the decision by saying you must
3 tell them that it's okay; otherwise it's presumptively not.

4 MR. THOMPSON: Absolutely not, your Honor. The
5 citizen is allowed to take whichever position he wants to
6 take, he or she wants to take. The government does not tell
7 them which position to take, the government -- and there is
8 no -- there is nothing requiring them to carry --

9 THE COURT: The government says it's illegal unless
10 you say it's okay, that's what the government says in your
11 statute.

12 MR. THOMPSON: That's true. But similarly, if the
13 government were to say that guns are allowed unless you say
14 it's okay, there would be the same need to speak. The key is
15 that the government doesn't tell you which position to take.
16 The government doesn't tell the owner that you have to say
17 guns are allowed or guns are not allowed. The decision is up
18 to the owner, it's not the state that takes that action.

19 THE COURT: So you don't view it as a state
20 speaking for the property owner.

21 MR. THOMPSON: I do not. It is simply the
22 government setting a default property rule in the way that
23 states set property rules. Let me just take a quick look.

24 THE COURT: Take your time, sir.

25 MR. THOMPSON: Sure. Thank you, your Honor.

1 Lastly, let me just briefly touch on, as said
2 previously, temporary restraining order is not appropriate in
3 this case. In the event that the court does decide to grant
4 a TRO, we would ask that its effect, first of all, be limited
5 to the moving parties, and we would ask that any TRO be
6 stayed pending appeal, or at a minimum for a period of three
7 business days, to allow the state to seek emergency relief at
8 the Second Circuit. So because a TRO is not appropriate in
9 this case because there is no imminent harm, because it's not
10 a proper vehicle for a mandatory injunction, and because
11 mandatory injunction is not warranted, we ask that the TRO
12 motion be denied.

13 THE COURT: Thank you, sir.

14 MR. THOMPSON: Thank you, your Honor.

15 MR. MELVIN: Good afternoon, your Honor. Edward
16 Melvin on behalf of the Oswego County District Attorney Greg
17 Oakes and the Oswego County Sheriff Don Hilton.

18 Your Honor, as you know, the Oswego County
19 defendants are only challenging the standing issue with
20 respect to this TRO, and we request that the court find *sua*
21 *sponte* no subject matter jurisdiction which would then allow
22 dismissal of the action against the Oswego County defendants.

23 Very quickly, your Honor, as to standing, I'd like
24 to address the arguments made by plaintiffs' counsel this
25 morning. With respect to the standing aspect of credible

1 threat of prosecution, plaintiffs' counsel argues two
2 examples demonstrating a credible threat of prosecution.
3 One, statements made by a state police representative,
4 lieutenant perhaps, Nigrelli, has nothing to do with Oswego
5 County. Secondly, he makes reference to a Facebook post --

6 THE COURT: Why wouldn't he have anything to do
7 with Oswego County when he has statewide jurisdiction?

8 MR. MELVIN: With respect vis-a-vis my defendants,
9 I mean, he may have it with --

10 THE COURT: I see what you're saying.

11 MR. MELVIN: Yes. With respect to Sheriff Hilton,
12 he made a generalized statement that he would enforce the
13 CCIA. I mean, that's his job, but the -- that's not the
14 standard, your Honor. And you put out, you put forth the
15 standard in *Antonyuk I*, in which Mr. Antonyuk failed to
16 allege that he's ever been threatened with arrest and
17 prosecution by law. And that's set forth in, by the Second
18 Circuit just this past July in *Does 1 to 10 v. Suffolk*
19 *County*, and if you recall, it's in your decision, in that
20 case, the plaintiffs were in possession of illegal firearms
21 and the Suffolk County Police Department sent them notice and
22 said, you know, your possession is illegal and they also said
23 we intend on arresting you. The Second Circuit said that was
24 not sufficient for credible threat of prosecution or
25 standing.

1 Here, it really boils down to Pastor Mann's
2 position is that the CCIA exists, therefore he has standing.
3 That's just not enough under the Second Circuit. So, your
4 Honor, for that reason, we respectfully request that you *sua
5 sponte* determine that there is no subject matter jurisdiction
6 and that would result in the dismissal of the action against
7 the Oswego County defendants. Thank you.

8 THE COURT: Thank you, sir.

9 MR. STAMBOULIEH: If you could just give me one
10 minute, I'm trying to find something.

11 Judge, if it's okay I'll address Mr. Melvin's
12 arguments first. With respect to the Oswego County District
13 Attorney, there are multiple, multiple cases that say that
14 the District Attorney is the proper defendant. As this court
15 remembers in *Antonyuk* I brief, I cited to *Avitabile v. Beach*
16 for the proposition that the superintendent was the correct
17 party and the court admonished me in the footnote that we
18 also had the District Attorney in that case as well. What
19 happened in that case is we dismissed the District Attorney
20 because it was agreed to that Beach, the superintendent, at
21 that time was the proper party. So at the end of the day
22 Beach, the superintendent, was the proper party. But there's
23 multiple cases. There's *Avitabile*, there's *Sibley v. Watches*
24 where it talks about courts in this circuit have held that
25 District Attorneys are proper defendants in suits challenging

1 the constitutionality of state laws. And I know he cited to
2 the *Doe* case where those individuals got a specific letter to
3 them saying, you know, turn in your firearm. If I recall
4 that opinion correctly, the court found that due to the
5 length of time that nothing's happened, that the court -- I'm
6 sorry, the Suffolk Police obviously knew that these people
7 had firearms and yet did nothing, and if I recall correctly,
8 it said due to the passage of time and nothing happening,
9 there's obviously no credible threat of enforcement. And
10 here we are 29 days into this new law where we have people on
11 the record saying that they're violating, will violate,
12 intend to violate the law. And that brings me to what --

13 THE COURT: So your position is that there is a
14 credible threat of enforcement and you're stating what
15 factors that demonstrate that.

16 MR. STAMBOULIEH: Well, for one, the sheriff of
17 Oswego County did talk about enforcing the law, and while the
18 District Attorney I don't believe has made any comments about
19 it, he is the one that's ultimately, it is well established
20 that the District Attorney and the District Attorney alone
21 should decide when and in what manner to prosecute a
22 suspected offender. So even if the sheriff arrests someone
23 or maybe doesn't arrest him but takes his firearm, the
24 District Attorney is the statutorily-authorized officer to
25 come in and decide whether or not to charge him. So it

1 doesn't matter if the sheriff says he's not going to charge
2 him but merely revoke the firearm, still turn him over to the
3 licensing official, maybe that person loses his Second
4 Amendment right to public carry. Did I answer the court's
5 question? Okay.

6 Turning to what Mr. Thompson said, that no one has,
7 no one -- I can't remember his exact words and I'm going to
8 butcher it and I'm sorry. Pastor Mann is currently violating
9 the law, I've said it before, he said it in his declaration
10 so when Mr. Thompson says there's no one currently -- no dire
11 emergency, no one's violating the law, I think a fair
12 reading, when Pastor Mann says he has and will continue to
13 carry in his church and in his home which is part of the
14 church, I think that would be fair to say that that's
15 probably a violation. I will point the court to the
16 Exhibit 1 and I'll just read it. Where it talks about social
17 media, the court had some questions about the passwords and,
18 you know, am I going to have to friend request someone, and
19 Mr. Thompson says that's not what's necessary. But what the
20 statute says is that it requires a list of former and current
21 social media accounts of the applicant from the past three
22 years to confirm the information regarding the applicant's
23 character and conduct as required in the good moral character
24 part of the paragraph. So if I come to the licensing officer
25 and say, you know, Judge, here are my social media accounts,

1 they're all private, he's going to say, well, I can't confirm
2 this information regarding the applicant's character and
3 conduct, I need you to authorize me to see your profile. I
4 don't know how else -- I don't know why they would put it --
5 why the legislature would put this language in if it's not
6 necessary for the licensing official to take the information
7 in the social media to confirm the information regarding the
8 applicant's character and conduct as required.

9 So I don't know what else to say about that other
10 than it seems like a logical question when the very next part
11 of this, "any other information required by the licensing
12 officer that is reasonably necessary and related to the
13 review of the licensing application," for that licensing
14 officer to just say, add me as a friend, hand over your
15 phone. I mean, we've got all kinds of different violations
16 that are concurrent with what's happening at that point and I
17 don't think they're going to be able to just say no. And at
18 least not get a permit.

19 Judge Doran, I know that Mr. Thompson made some
20 comments about Judge Doran. Judge Doran is Corey Johnson's
21 licensing official, that's who signed Mr. Johnson's permit
22 and we believe he would also be Mr. Sloane's licensing
23 official. Mr. Doran, Judge Doran I should say, hasn't ruled
24 on the application because Mr. Sloane can't apply for that,
25 for the permit until October of 2023, if he's willing to

1 trade his constitutional rights, the First and the Fifth, in
2 order to fill out the application, turn over his social media
3 accounts, befriend the licensing official, give him his
4 social media, or the sheriff, whoever wants it, list all of
5 the information that's required on the application. And I
6 think the Supreme Court says that that's -- you don't trade
7 one right for another, you don't have to surrender one right
8 for another. So Judge Doran would be the licensing officer
9 for Sloane. I took the long way of saying that but that's
10 what I meant to say.

11 It was also curious, Mr. Thompson saying that
12 Pastor Mann would basically be subject to maybe an
13 enforcement action to decide the interesting question of
14 whether or not his parsonage on church property is part of
15 the church or a sensitive place under the law. I don't think
16 the law requires Mr. -- I'm sorry, Pastor Mann to be arrested
17 so he can decide and, you know, subject to a felony if he's
18 correct in his interpretation or incorrect in his
19 interpretation. I don't believe that that's what's
20 necessary.

21 The deal about the "horrors" in the house of
22 worship, some of those were stopped by law-abiding citizens
23 carrying firearms in church. And one of the problems with
24 this, with this specific law is, as was just filed yesterday,
25 yesterday or today, I'm sorry, in the Southern District of

1 New York, Jewish synagogue filed a lawsuit over them not
2 being able to have guns in the synagogue due to, you know,
3 hateful threats against the Jews and the Jewish religion. So
4 it takes away the rights of the pastor --

5 THE COURT: Counsel, how do you respond to the
6 state's position that there's historical, plenty of
7 historical analogues about the state indicating that houses
8 of worship are not a place where carry permits would be
9 allowed?

10 MR. STAMBOULIEH: So we have historical analogues
11 going back to, I want to say 1670, I believe, where it talks
12 about how people were required to bring guns to church and
13 into places of worship. So there's historical analogues on
14 both sides. Of course *Bruen* says you don't have to have an
15 exact historical analog, and we're not taking the position
16 that people are going to be required to bring guns to church.

17 THE COURT: You're taking the position that the
18 congregation should have the right to decide, should they
19 decide they want to defend themselves and they know their
20 congregants and synagogues or churches that they have the
21 right to have their congregants bring weapons lawfully.

22 MR. STAMBOULIEH: Pastor Mann has taken specialized
23 training, specialized training from a church security
24 instructor to be able to defend his church. He has
25 authorized certain people who have also taken church

1 security-specific training to carry in church. And I know
2 that this state wants to say that we're protecting property
3 rights but what they've done is they have usurped all of the
4 property rights from all of these different businesses where
5 even the owner of a business, Pastor Mann, the proprietor of
6 the church, the pastor of the church, can't carry in his own
7 church, might not be able to carry in his own home, might be
8 committing a felony right now. Anyone else that owns a
9 business in Times Square, and I know they said that we've
10 just put some letters of some things that have happened in
11 New York City, they've made all of these places sensitive
12 places and sent letters to these people, which I know is not
13 in this district, Judge.

14 THE COURT: Okay, thank you.

15 MR. STAMBOULIEH: I'm sorry, Judge.

16 THE COURT: We have enough issues here, I don't
17 know if we need to drag Times Square into it.

18 MR. STAMBOULIEH: Okay, but they say these
19 businesses in Times Square now are sensitive places so you
20 can't have your business premise permit, whatever they call
21 it down there, is go no good anymore, turn your guns in or
22 take them away. And that's kind of what the state is doing
23 here, so everyone that could carry lawfully prior to 9/1,
24 Bruen was supposed to expand the Second Amendment, New York
25 took the opposite approach, locked it down tight. So as

1 Governor Hochul said, the only place you can carry, probably
2 some streets. Do you have any other questions, Judge?

3 THE COURT: I do not.

4 MR. STAMBOULIEH: Okay, thank you.

5 THE COURT: Thank you.

6 MR. THOMPSON: Thank you, your Honor. Just a brief
7 response to some of the points raised by Mr. Stamboulieh.

8 First of all, in terms of who is a proper party, I
9 think it's important to remain focused on the fact that
10 standing has three elements to it. It's not just
11 redressability, it's also injury in fact and traceability.
12 So simply suing the right person doesn't mean that you have
13 standing. For instance, Judge Doran may be the proper person
14 to sue in the event of the denial of an application, but he
15 hasn't denied an application. So while there may be
16 redressability, there's no injury in fact and no injury
17 traceable to Judge Doran.

18 THE COURT: Let me ask you this. Is he going to
19 review applications unless they comply with the new statute?

20 MR. THOMPSON: He would certainly be --

21 THE COURT: Presumably, he won't.

22 MR. THOMPSON: He would presumably be referring --
23 reviewing applications, I couldn't tell you how he would do
24 it other than to say that if and when he does, I'm sure it
25 will be in accordance with the law and will be --

1 THE COURT: As a sworn New York State court judge,
2 he's going to be compelled to comply with the laws, so
3 therefore those applications, if they don't comply with this
4 new section, he's not going to entertain.

5 MR. THOMPSON: I think it would be entirely
6 speculative to say how Judge Doran would refer applications
7 that no plaintiff has put in front of him. I don't think
8 that, you know, I think that would be an exercise in
9 hypotheticals among us, just as it would be to, for us to
10 guess how your Honor would review the next case in front of
11 you.

12 So again, it's not just redressability, it's not
13 just suing the right party, it's suing the right party who
14 has caused injury, and that's not the case in this matter.

15 Similarly in terms of threats of enforcement, what
16 is missing here is a credible threat of enforcement against
17 these specific plaintiffs. That's what hasn't been alleged,
18 that's what's not there. No one has talked to Pastor Mann,
19 no one has threatened enforcement against Mr. Antonyuk or any
20 other specific plaintiff, and that is what the cases that we
21 cite --

22 THE COURT: Is Pastor Mann violating the new
23 statute?

24 MR. THOMPSON: Is he violating the new statute?
25 Presumably if he carries a gun into a church, yes, he's

1 violating the new statute, but has anyone told them that the
2 statute will be enforced against him specifically or warned
3 him off doing that? I don't believe that's the case, and
4 that's the distinction. It's not just enough to have a
5 general statement that the state will enforce the law in
6 general, there needs to be a specific threat against a
7 specific plaintiff in order for there to be standing.

8 In terms of Mr. Stamboulieh's discussion of social
9 media and the list of current and former accounts, with that
10 list, you can view a person's public social media postings,
11 what that account has posted publicly. There is nothing in
12 the statute that says that there has to be any invasion, a
13 password given, any nonpublic access granted, there's nothing
14 in the statute that says that. And again, the facial
15 challenge statute -- standard is important here, because the
16 question is not can we imagine an unconstitutional
17 application; the question is can we imagine no possible
18 constitutional application, and that's just not the case
19 here.

20 Mr. Stamboulieh pointed out that the statute says
21 that the list of social media accounts is for the purpose of
22 confirming information about the character statute -- the
23 character standard. I think that actually narrows the scope
24 of the statute, because again, it is not an open-ended, it's
25 not open-ended discretion, it's not an open-ended dive into

1 the person's background, it's not looking into someone's
2 Onlyfans site. It is checking to see whether there are those
3 individualized indicia of dangerousness or risk that is what
4 the good moral character standard is focused on, and that is
5 supported by history and tradition, as Judge Barrett pointed
6 out.

7 So when Mr. Stamboulieh says that what happens if a
8 licensing official says add me as a friend, hand over your
9 phone, these are hypotheticals and these will give rise to an
10 as-applied challenge if they happened, but they haven't. And
11 if and when something like that were to happen, then we could
12 litigate that in front of your Honor or one of your
13 colleagues, but again, the question is not can we imagine a
14 situation where the statute is unconstitutionally applied.
15 That is not what's required in the analysis.

16 The same standard, the same question goes to the
17 question of whether the parsonage is part of a church. If
18 the statute is constitutional, if the statute can be
19 constitutionally applied, we don't need to invent a scenario
20 where it's applied unconstitutionally. In terms of the
21 history of houses of worship, this is an area where there
22 are, as Mr. Stamboulieh said, laws from the 1620s, 1630s,
23 1640s that say you must bring your gun to church, and this is
24 of course from a very different time of American history when
25 there were much greater concerns about violence and attack on

1 the way there. But the statutes that say you may not, the
2 statutes that say that guns may not be brought into church or
3 guns may not be carried on the sabbath, those come from the
4 history of the United States of America in the 18th and 19th
5 centuries, which is the primary area that we're concerned
6 with. And I don't think that colonial statutes from the
7 1630s should trump American history from the 18th and 19th
8 century.

9 THE COURT: You don't account for recent history of
10 shootings in synagogues and churches, you talked about in
11 your earlier argument how horrible that is. Counsel makes a
12 point that, you know, if it's legal for a congregation and
13 they so choose to have their congregants have weapons if they
14 have concealed carry, that also is an issue that should be
15 addressed, which is not taken into account in your statute.

16 MR. THOMPSON: Well, again, I think the *Bruen* test
17 is about history rather than interest balancing. If this, if
18 this case, if the statute, if the standard that the Supreme
19 Court had given us was, we need to take everyone's interest
20 into account, that would be a very different discussion that
21 we were having in front of you. But the question is, is
22 history and the history --

23 THE COURT: We're talking about constitutional
24 rights and history, okay, and there's history on both sides.

25 MR. THOMPSON: Yes, but the American history, not

1 the pre-American history, supports the ability of the state
2 to ban guns in churches as any number of states did.

3 And lastly, again, on private property, I think the
4 rhetoric got a little heated but no property rights are being
5 usurped here. The owners get to decide and they get to know
6 in order to make the decision whether guns should be allowed
7 on their properties. And I think that's their right, I think
8 it's an appropriate thing to do.

9 And with that, your Honor, we ask that the TRO
10 motion be denied and we thank you for listening to us.

11 THE COURT: Thank you, sir.

12 MR. THOMPSON: Thank you.

13 MR. MELVIN: Your Honor, plaintiffs' counsel made
14 reference to an argument made by the Oswego County defendants
15 as to the DA not being a proper defendant. We have not made
16 such an argument. Our argument's squarely based on the lack
17 of standing. And to that end, plaintiffs' counsel
18 distinguished the *Does 1 through 10* case by giving the
19 impression that a passage of time is some kind of aspect of
20 the credible prosecution analysis and it's not. It just so
21 happens that in that case, the plaintiffs received a threat
22 with a notice and there was a passage of time, and so after
23 that point in time the Second Circuit said, well, there's no
24 threat remaining after they made a specific threat. That's
25 exactly what we have here. There's no specific threat,

1 there's no threat whatsoever. So the passage of time, your
2 Honor, is immaterial to the analysis of a credible
3 prosecution.

4 THE COURT: So how do you address what they've
5 indicated in their papers that Sheriff Hilton has indicated
6 he would enforce the law?

7 MR. MELVIN: Right, that's a generalized statement
8 that he's making as sheriff, there's nothing with respect to
9 plaintiff Mann. Thank you, your Honor.

10 THE COURT: Thank you. Okay. Unless there's
11 anything further, that will complete the argument. You have
12 a briefing schedule on the preliminary injunction, the court
13 will issue a decision on the TRO, and we'll look for your
14 papers. Okay? Thank you.

15 MR. STAMBOULIEH: Thank you, Judge.

16 MR. THOMPSON: Thank you, your Honor.

17 THE CLERK: Court's adjourned.

18 (Court Adjourned, 12:28 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER
2
3

4 I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
5 Official Realtime Court Reporter, in and for the
6 United States District Court for the Northern
7 District of New York, DO HEREBY CERTIFY that
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19 /S/ JODI L. HIBBARD
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23 Official U.S. Court Reporter
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